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May 30, 2008

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Ms. Delores Brown
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

FROM MODESTO:
(209) 577-8200
(209) 577-4910 FAX

Re: Bay Delta Conservation Plan Notice of Preparation Comments

Dear Ms. Brown:

On behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter "County of San Joaquin" or "County"), we submit the following comments to the Notice of Preparation: Environmental Impact Report and Environmental Impact Statement of the Bay Delta Conservation Plan dated March 17, 2008 ("NOP").

Over half of the legal Delta is located within the County of San Joaquin and the County is an interested stakeholder in the future viability of the Delta. County staff is very concerned about the Bay Delta Conservation Plan (BDCP) which is being developed and its potential impacts on the County. Based on the limited information available regarding the BDCP as set forth in the NOP, the County submits the following general comments.

1. San Joaquin County Board of Supervisors Opposes Isolated Facility.

On May 13, 2008, the San Joaquin County Board of Supervisors adopted Resolution R-08-269 a "Resolution Opposing the Delta Vision Blue Ribbon Task Force Recommendations for the Sacramento-San Joaquin River Delta." The Board of Supervisors has taken many actions over the years opposing a Peripheral Canal or similar isolated facility. Resolution R-08-269, which is attached to this letter, provides the County's most recent position on an isolated facility based on the recommendations of the Delta Vision Blue Ribbon Task Force. The NOP provides that at least four Delta conveyance strategies will be considered as suggested by the Delta Vision Task Force. The facts, issues and concerns expressed in R-08-269 must be considered in the BDCP environmental document to the extent that the

conveyance alternatives include the recommendations contained in the Delta Vision Task Force recommendations.

2. Project Description within NOP is Inadequate.

The NOP for the BDCP in and of itself is inadequate. The California Environmental Quality Act (CEQA) requires that the NOP provide "sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response." *CEQA Guidelines* § 15802. This section requires that at a minimum the NOP include a project description, the location of the project and the probable environmental affects of the project. The NOP identifies the BDCP as the project; however, the content, parameters and description of the BDCP are unknown. There is no BDCP plan to review. There is only a "Planning Agreement" and a "Points of Agreement for Continuing the Planning Process." The BDCP is still in its planning stages and the parameters of the BDCP have not yet been identified. Therefore, the project is not adequately described in the NOP as required by CEQA.

3. Inadequate and inconsistent project objectives.

The County is concerned that the objectives of the BDCP as stated in the NOP are inadequate and inconsistent. The NOP states that the BDCP is being developed "to meet objectives of providing the conservation of covered species and their habitats, addressing the requirements of the federal and State endangered species laws and improving water supply reliability." These objectives appear inconsistent with each other. If the goal is to conserve covered species, then that should be evaluated and considered without regard to improving water supply exports from the Delta. In addition, given the current extremely precarious condition of covered species within the Delta and the inability of current experts to identify the reasons for the demise of certain covered species, it is not reasonable for the resources agencies to be contemplating a multi-year habitat conservation plan that binds the State and federal agencies would prevent required future regulation which may be found necessary.

4. Recognizing the impacts on agriculture within the Delta.

The Sacramento-San Joaquin River Delta consists of thousands of acres of productive agricultural land. Any project relating to the Delta will affect this vibrant agricultural industry; however, the NOP fails to even mention agricultural or contemplate the potential impacts on agricultural by the BDCP. This is a significant shortcoming of the NOP and the BDCP. The EIR/EIS and the BDCP must consider and address the potential impacts on agriculture within the Delta. The County contends that the NOP is lacking in that it does not describe or contemplate that the BDCP will affect agricultural and the conditions necessarily associated with agricultural production within the Delta.

5. Maintaining and improving water quality.

The objectives of the BDCP fail to recognize the important State law requirements to maintain or improve water quality within the Delta. The Sacramento-San Joaquin

River Delta is subject to water quality objectives in order to sustain the agricultural beneficial uses within the Delta and to meet fishery requirements. Any EIR/EIS prepared for the BDCP must fully analyze the impacts on water quality and possible, viable alternatives to meet water quality standards.

The County is concerned that an isolated facility for water conveyance around the Delta will remove significant Sacramento River flows within the Delta and the Delta will be satiated with San Joaquin River water which is highly saline. Under the present situation, the responsible parties for maintaining the water quality objectives within the Southern Delta fail to meet these responsibilities from time to time. With the absence of higher quality Sacramento River water, the County is concerned that it will be impossible to meaningfully meet the Southern Delta salinity objectives. The BDCP must analyze these potential adverse impacts and any alternatives to meet these salinity objectives.

6. Improving water supply reliability for all water users and properly applying California water law priorities.

The BDCP appears to be focusing on improving water supply reliability for users who export water from the Delta; however, the reliability of water supply for users within the Delta must also be considered and is of even greater importance. The BDCP and its environmental document need to meaningfully consider water supply reliability for all users of water supply from the Sacramento-San Joaquin River watersheds. In doing so, the proper application of California water laws need to be recognized and applied. California water law is based on the priority system of State water rights. Shortages are addressed by implementation of the water right priority system. The most senior water rights are protected while junior water rights suffer. Competing demands for water in and from the Bay-Delta are properly resolved by applying the priority system, not by "balancing." If there is insufficient water in a stream system to support all appropriators, then diversions diminish starting with the most junior appropriators. (*Pleasant Valley Canal Company v. Borror* (1998) 61 Cal.App.4th 742, 770.) The BDCP must recognize that shortages of water within the Bay-Delta are resolved by applying the priority system of water rights and other California water laws, such as the Delta Protection Statute (*Wat. Code* §§ 12200 et seq.), the Watershed Protection Statute (*Wat. Code* §§ 11460 et seq.) and the Area of Origin Statute (*Wat. Code* §§ 10500 et seq.).

7. The Delta Protection Act Applies.

The Delta Protection Act (Water Code sections 12200 et seq.) provides certain protection to users within the Sacramento-San Joaquin Delta and places certain burdens on the export projects. These provisions require "an adequate supply of water in the Delta to maintain and expand agriculture" (*Wat. Code* §12201) and no water may be exported from the Delta which is needed to meet the water supply and salinity control requirements needed within the Delta (*Wat. Code* §§12204, 12202). These protections place certain limitations on the export pumps and on an isolated facility. While the various priority statutes have been ignored by the exporters, the ignoring cannot continue. The BDCP and its environmental document must be developed consistent with the requirements and protections of the Delta Protection Act.



8. Water Conveyance Facilities Alternatives - Must Include "Delta Corridors" Alternative and "Regional Self Sufficiency" Alternative.

The NOP indicates that Governor Schwarzenegger by letter dated February 28, 2008 directed the Department of Water Resources to proceed with "the CEQA/NEPA process to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP efforts to better protect at-risk fish species . . ." It is unclear from the NOP if this is the environmental document requested by the Governor. If so, the NOP does not clearly describe the referenced four alternatives nor does the NOP clearly refer to any attachment or other documents that describes the referenced four alternatives. This is a severe shortcoming of the NOP.

The County is aware that the current water conveyance alternatives do not include the comprehensive "Delta Corridors" plan. The Delta Corridors plan has been presented by the South Delta Water Agency and the Central Delta Water Agency based in part on work performed by Dr. Russ T. Brown, Jones & Stokes. This proposal was presented to the Delta Vision process. It seeks to reconnect the San Joaquin River with the Bay. This proposal should have significant effects to fisheries while maintaining water quality supply and quality within the Delta. The environmental document for the BDCP must include meaningful analyses of this alternative and the BDCP decision makers must give meaningful consideration to implementing the Delta Corridors alternative.

In addition, the Central Delta Water Agency has advanced a water supply alternative of "Regional Self- Sufficiency." This alternative addresses the supply-demand problem rather than resolving the supply problem by relying on exporting more and more Delta water. This alternative for "water reliability" needs to be considered in the environmental analysis for the BDCP.

Thank you for providing this opportunity for the County of San Joaquin to submit comments to a program that will have potential significant effects within the Sacramento-San Joaquin Delta which is located in part within San Joaquin County.

Very truly yours,


DEEANNE M. GILLICK
Attorney at Law

DMG:dmg

Enclosure

cc: Each Member of the Board of Supervisors
T.R. Flinn, Director of Public Works
Thomas Gau, Deputy Director of Public Works
Mel Lytle, Ph.D., Water Resources Coordinator
Dante John Nomellini, Central Delta Water Agency
John Herrick, South Delta Water Agency

BEFORE THE BOARD OF SUPERVISORS OF THE SAN JOAQUIN COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT
STATE OF CALIFORNIA

RESOLUTION

R-08- 269

RESOLUTION OPPOSING THE DELTA VISION
BLUE RIBBON TASK FORCE RECOMMENDATIONS
FOR THE SACRAMENTO-SAN JOAQUIN RIVER DELTA

WHEREAS, on September 28, 2006 under Executive Order S-17-06, Governor Arnold Schwarzenegger established the Delta Vision Committee, a Blue Ribbon Task Force and Stakeholder Coordination Group to help develop a durable vision for sustainable management of the Delta with the goal of managing the Delta over the long term to restore and maintain identified functions and values that are determined to be important to the environmental quality of the Delta and the economic and social well being of the people of the State; and,

WHEREAS, the planning process has progressed to the point where, on November 30, 2007, the Task Force released their Delta Vision Report (Report) entitled, "Our Vision for the California Delta." In the report it describes both short- and long-term recommendations that propose changes to a wide array of issues affecting the Delta including water supply, water quality, flood control, land use, habitat, and local governance; and,

WHEREAS, while this planning effort together with the several Report recommendations has outlined ideas that may allow the Delta to meet future beneficial needs in a sustainable way, it also supports and calls for the studies, modeling, investigations, and potential development of an isolated water conveyance facility, Peripheral Canal singularly or as a part of a dual conveyance system; and,

WHEREAS, the construction and operation of a Peripheral Canal or a similar facility would require the taking of prime agricultural land and possibly urban areas for the construction of the canal itself and the loss of additional acreage from seepage from that canal, will cause severance damage to additional prime agricultural land, will sever and impair utilities and local road systems, will create significant new flood dangers to agricultural lands and urban areas within the City of Stockton and San Joaquin County, will adversely affect the water rights of water users within San Joaquin County, will circumvent the Delta common pool, and will seriously impair Delta water quality and an adequate supply for all beneficial uses, and the protection of endangered fish populations, wildlife, and other recreational resources within the County; and,

WHEREAS, given the fact that the Report acknowledges on page 13 that there is not currently sufficient information to determine whether an isolated facility, dual conveyance system or through-Delta conveyance is the best solution for the Delta, the recommendation on page 14 of the Report that an "assessment of a dual conveyance system proceed as the preferred direction" cannot be supported; and,

WHEREAS, San Joaquin County is concerned that the Seventh Principle of the Report, which provides that a "revitalized Delta ecosystem may require reduced diversions, or changes in patterns of diversion upstream, within and exported from the Delta," does not specifically consider and respect California's water right priority system and statutory protections for watershed protection areas and areas of origin; and,

WHEREAS, San Joaquin County is concerned that the Report considers upstream diversions and diversions within the Delta for local use as a problem to be addressed when these uses must be included within the Delta ecosystem that the State must strive to protect the County from the adverse impacts of Delta exports; and,

WHEREAS, San Joaquin County is concerned that the Report focuses on the Public Trust Doctrine as principles of State law to be recognized, while ignoring other equally important principles of State law, including, but not limited to, the water right priority system, and the protection of areas of origin and watershed protection areas; and,

WHEREAS, other more practical alternatives exist as outlined under a locally-supported proposal for greater regional self-sufficiency than a Peripheral Canal that can be constructed more rapidly at substantially less cost and will not create the destruction and problems that would be created by an isolated water conveyance facility; and,

WHEREAS, the State of California Water Plan has also promoted the need for more integrated and regionally-focused water resource solutions including greater efficiency in the use of available surface supplies, expansion of conjunctive use programs, better management of groundwater resources, desalination, conservation and recycling to establish greater self-sufficiency in areas of the State that rely on imported water supplies; and,

WHEREAS, the Blue Ribbon Task Force has apparently pre-supposed the need for a Peripheral Canal, isolated or dual conveyance facility in the Delta despite the lack of consideration for other more viable alternatives and without sound science and technical analysis needed for an informed decision. County representatives have worked cooperatively with Delta interests and other local water agencies to inform the Delta Vision process of other more viable alternatives with only limited success; and,

WHEREAS, on April 16, 2008, the 19-member agency San Joaquin County Flood Control and Water Conservation District Advisory Water Commission voted unanimously to recommend approval of this resolution.

NOW THEREFORE, BE IT RESOLVED that the San Joaquin County Board of Supervisors does not support the Blue Ribbon Task Force's Delta Vision Report recommendations and the continued strategic planning process so long as this effort supports and promotes the development of a Peripheral Canal or any other isolated water conveyance facility in the Delta; and hereby urges the following:

1. That the Sacramento-San Joaquin River Delta, not California Delta as listed in the Report, be sustained as a unique and valued area, warranting continued investment, preservation, maintenance and special legal protections wherein the State must adopt explicitly in policy that the over-arching goal is the continuous and simultaneous improvement in health of the Delta, the Bay/Delta Estuary and other Northern California tributaries through improved water supply,

reliability, water quality, and flood protection by sustaining priorities for the Delta, areas of origin and other watershed protection areas in California.

2. That the priority for meeting the needs in the Delta and Northern California tributaries from which water is exported should be acknowledged and forthrightly honored by both the Central Valley Project and State Water Project to comply with the San Joaquin River, Watershed and Delta Protection Statutes and the continuation of the Delta as a common pool to the maximum extent possible for all local beneficial uses and export as described in Water Code Section 12200 et seq.
3. That in order for the recommendations in the Report to be consistent with the technical findings acknowledged in the Report, the Task Force should also recommend assessment of Through-Delta conveyance.
4. That regardless of what Delta improvements are ultimately supported by the State, any Delta improvements must acknowledge that water users and interests within San Joaquin County are entitled to priority water use and protection from exports under existing California law, and insure that State actions are consistent with those rights and protections.
5. That the foundation for recommendations by the Report for any new water resource policy must: 1) recognize the priority for the water needs in the Delta and other areas of origin and watershed protection areas; 2) provide for the protection of California's water rights priority system; 3) provide for Delta salinity control; and 4) recognize the established fundamentals of California water law wherein the California State Constitution Article X, Section 2 prohibits waste, unreasonable use, and unreasonable method of use of water resources and it further provides that "the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."
6. That future water supplies for the State of California be developed through greater regional self-sufficiency as prescribed by "A Water Plan for the 21st Century: Regional Self-Sufficiency" to include increased conservation, recycling, efficiency, conjunctive use, desalination, surface and groundwater storage and reclamation.
7. That the State set a priority to support self-sufficiency through improved Integrated Regional Water Management planning and implementation activities throughout the State to develop and utilize local water storage for the capture and management of available flood waters or other projects for improved conjunctive use, recharge, banking and groundwater storage in California.
8. That Delta levees be strengthened and operable gates or other facilities installed at strategic locations to improve future Delta sustainability, urban flood protection, ecosystem integrity, agricultural health and facilitate recovery from seismic or other emergency to optimize through-Delta conveyance and work in cooperation with other agencies to develop additional supplies to address the needs for the entire State.
9. That the primary and secondary boundaries of the Delta remain as established under California law and that any new governance proposal in the Report must first recognize and support: 1) the vested private property rights of land owners and the constitutionally recognized land use controls of local governments that encompass the Delta; 2) provide for

the protection of California's water rights priority system; and 3) provide for the protection of watershed protection and area of origin rights.

NOW THEREFORE, BE IT FURTHER RESOLVED that in conjunction with these declarations, the San Joaquin County Board of Supervisors further urges recognition of the following:

1. That the failure of the State Water Project to develop the promised 5 million acre-feet of supplemental water supply for California from North Coast rivers, as listed in Department of Water Resources Bulletin 76, limits the export of only surplus water from the Delta to periods and times when senior water rights, areas of origin and other beneficial uses are not adversely impacted.
2. That the San Joaquin River should also be recognized as a unique and valued watershed to be restored and protected as a vital element of a healthy Delta to provide for the reestablishment of sufficient in-stream flows for all beneficial uses and fishery habitat from the Friant Dam to the Delta.
3. That a long-term sustainable drainage solution in the San Joaquin Valley that incorporates ocean outfall must be implemented so agricultural tail water and groundwater accretions high in salinity from lands in the Westside Service Area, Grasslands and wildlife refuges does not drain into the San Joaquin River. This solution should result in the preservation of our valued agriculture economy in the Valley and in greater regional water supply, improved water quality and sustainability through the conservation of hundreds of thousands of acre-feet of water released annually from the Stanislaus River or other Eastside tributaries to comply with the Vernalis and South Delta Salinity Standards.

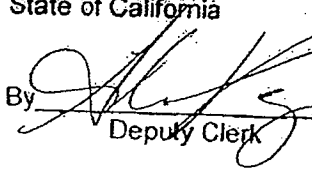

PASSED AND ADOPTED 5/13/08 by the following vote of the Board of Supervisors, to wit:

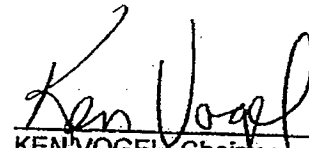
AYES: **Ruhstaller, Ornellas, Gutierrez, Mow, Vogel**

NOES: **None**

ABSENT: **None**

ATTEST: LOIS M. SAHYOUN
Clerk of the Board of Supervisors
of the County of San Joaquin,
State of California

By  Deputy Clerk 


KEN VOGEL, Chairman
Board of Supervisors
of the San Joaquin County Flood Control
and Water Conservation District,
State of California